



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

*Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000  
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October 28, 2013

Jimmy Blais  
MJB Properties, LLC  
9125 10<sup>th</sup> Avenue South  
Seattle, WA 98108

RE: Water Quality Certification Order #9907 for U.S. Army Corps of Engineers  
Public Notice #NWS-2012-1111, MJB Travelift Project, in Anacortes,  
Skagit County, Washington

Dear Mr. Blais:

On October 11, 2012, MJB Properties, LLC submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed MJB Travelift project. Revised JARPAs were submitted to Ecology on December 31, 2012, and May 8, 2013.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Erik Stockdale, Section Manager  
Shorelands and Environmental Assistance Program  
Northwest Regional Office

ES:rrp:cja

Enclosure

**By certified mail: 7011 0470 0003 3720 7615**



cc: Jim Green, U.S. Army Corps of Engineers  
Doug Thompson, Washington Department of Fish and Wildlife  
Terry Carten, Washington Department of Natural Resources  
Lindsay Wright, U.S. Fish & Wildlife Service

e-cc: Bob Fritzen – NWRO  
Laura Inouye – HQ  
Kurt Baumgarten – BFO  
Pete Adolphson – HQ  
Sandra Caldwell – HQ  
Loree' Randall – HQ  
Raman Iyer – NWRO  
Stan Walsh, Skagit River System Cooperative      [swalsh@skagitcoop.org](mailto:swalsh@skagitcoop.org)  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

IN THE MATTER OF GRANTING A ) ORDER #9907  
WATER QUALITY ) Corps Reference #NWS-2012-1111  
CERTIFICATION TO ) MJB Travelift Project; Fidalgo Bay, Anacortes,  
MJB PROPERTIES, LLC ) Skagit County, Washington.  
in accordance with 33 U.S.C. 1341 )  
(FWPCA § 401), RCW 90.48.120, RCW )  
90.48.260 and Chapter 173-201A WAC )

TO: Jimmy Blais  
MJB Properties, LLC  
9125 10<sup>th</sup> Avenue South  
Seattle, WA 98108

On October 11, 2012, MJB Properties, LLC submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. Revised JARPAs were submitted to Ecology on December 31, 2012, and May 8, 2013. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on April 10, 2013. A joint public notice erratum/revision was issued on April 10, 2013.

Construction of a new travelift, pier, wash rack, service building, and ancillary utilities, and installation of a float for seaplane operations includes:

In-water work

- Construction of a new 250-ton mobile boat hoist (Marine Travelift) consisting of two 110- by 8.25-foot concrete piers with no more than 46 steel piles (12 to 24 inches in diameter).
- Excavation and dredging of a pier well extending 30 feet into the existing uplands to -8 foot elevation, requiring removal of 1,350 cubic yards of dredge material and 428 cubic yards of upland material (both sediment and upland soil would be disposed of at an approved upland disposal site).
- Installation of approximately 200 lineal feet of sheet pile to create a pier well.
- Installation of a new 12- by 100-foot floating pier with light-permeable grating.
- Removal of an existing 40- by 80-foot pier.
- Installation of a new 6-inch stormwater outfall into Fidalgo Bay.

Upland work

- Rerouting of existing utilities around a wash rack area (water, power, sewer, etc.)
- Installation of a new 56- by 120-foot concrete boat wash pad and processing system.
- Construction of a new 20- by 50-foot one-story ancillary building.

The project is located at 2601 T Avenue, Anacortes, Skagit County, Washington, Fidalgo Bay, Section 19, T. 35 N., R. 2E., WRIA 3.

**AUTHORITIES:**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 302, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. § 1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

**WATER QUALITY CERTIFICATION CONDITIONS:**

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will meet the applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

**A. General Conditions:**

- A1. For purposes of this Order, the term "Applicant" shall mean MJB Properties, LLC and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #9907 and Corps Reference #NWS-2012-1111.

- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on May 8, 2013. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
- A4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
- A5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual Section 404 permit.
- A6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
- A7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- A8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
- A9. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project or mitigation sites.
- A10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
- A11. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

**B. Water Quality Conditions:**

B1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210(1)(e)(i).

B2. In-Water Construction Water Quality Sampling and Monitoring: A Water Quality Protection and Monitoring Plan (Plan) shall be developed and implemented. The Plan shall be submitted to Ecology per Condition A2 for review and approval at least 30 days prior to start of construction. "In-water construction" is defined as all work below the ordinary high water mark of Fidalgo Bay.

The Plan shall include the following minimum requirements:

- a. Locations of samples: Locations of water quality sampling sites shall be identified and described in the Plan and on a map of the project area. At a minimum, sampling shall take place at the point of compliance as specified in WAC 173-201A-210(1)(e)(i), which allows a 150-foot temporary area of mixing for turbidity resulting from disturbance of in-place sediments in Fidalgo Bay. Background samples shall be collected outside the area of influence of the in-water work. Background samples shall be collected at the same frequency as the point of compliance samples.
- b. Number of samples: Number and frequency of water quality samples to be taken.
- c. Parameter to be sampled: Turbidity shall be sampled for this project.
- d. Equipment: Sampling for turbidity is to be accomplished using a turbidometer properly calibrated according to the operator's manual.
- e. Best Management Practices (BMPs): A description of the BMPs that will be used during construction to protect water quality.
- f. Detection of exceedances: Water quality standards for turbidity in "Extraordinary" waters are as follows: turbidity shall not exceed 5 NTU over background conditions when the background is 50 NTU or less, or a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. If exceedances of this standard at the point of compliance specified in WAC 173-201A-210(1)(e)(i) is detected through water quality sampling and monitoring, the Applicant shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, the Applicant shall assess the efficacy of the site BMPs and update or improve the BMPs used at the work site in an effort to reduce or prevent recurrence of the turbidity exceedance.

- g. Reporting: If no exceedances are detected, results of water quality sampling, as determined by the Plan, shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.
- h. Notification of exceedances: Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #9907, Attn: 401/CZM Federal Project Manager, by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:
  - i. A description of the nature and cause of exceedance.
  - ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance.
  - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
  - iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the exceedance, turbidity results and location, photographs, and any other pertinent information.

**C. Conditions for Construction Activities:**

**Upland Conditions:**

- C1. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- C2. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- C3. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.

**In-Water Conditions:**

- C4. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.

- C5. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- C6. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- C7. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology that fisheries resources may be adversely affected.
- C8. During project demolition or construction, a containment boom and absorbent pads shall be placed around the perimeter of the work area to capture wood debris and other materials released into the waters as a result of construction activities. All accumulated debris shall be collected and disposed of upland at an approved disposal site.
- C9. A turbidity curtain shall be properly deployed and maintained during in-water activities in order to minimize turbidity and re-suspension.
- C10. The Applicant shall use tarps or other containment method when cutting or drilling over water to prevent debris, sawdust, and other materials from entering the water.
- C11. During construction, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
- C12. All manmade debris that has been deposited below the Ordinary High Water Line (OHWL) within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Concrete rubble, metal debris, and other debris in the construction work corridor that have washed into marine areas shall be removed from the project area.
- C13. Riprap shall be removed with a dredging clamshell bucket or a land-based excavator. Riprap removal may be conducted by a tracked excavator working at low tides and shall not come into contact with waters of the state.
- C14. Project activities shall be conducted to minimize siltation of the beach area and bed.
- C15. The Applicant shall operate the barge(s) and tug in deep water so as to minimize nearshore propeller wash impacts such as suspension of nearshore sediments.
- C16. Barges shall not be allowed to ground-out during construction.



**Piling Removal Conditions:**

- C17. Approximately 31 existing concrete/steel support piles and steel H-beams shall be removed from marine waters. Piling shall be removed by vibratory extraction. If piles break during removal and cannot be removed by vibratory extraction, the piling shall be cut at the mudline.
- C18. Piles, stubs, debris, and all associated excavated sediments shall be contained and prevented from entering waters of the state.
- C19. Piles removed from substrate: the pile shall be moved immediately from the water into the barge or onto uplands. The pile shall not be shaken, hosed-off, left hanging to drip or any other action intended to clean or remove adhering material from the pile.
- C20. Work surface on the barge deck or on uplands shall include a containment basin for piles and any sediment removed during pulling of the piling. Basins may be constructed of durable plastic sheeting with sidewalls supported by hay bales or support structure to contain all sediment.
- C21. The piles and any sediment removed during pulling of the piling shall be disposed of at an approved upland disposal site.

**Pile Driving:**

- C22. The 46 new pilings shall be steel.
- C23. The pilings shall be installed using a vibratory hammer whenever possible. An impact hammer may be used to proof pile, if needed.

**Sheet Pile Driving:**

- C24. The steel sheet pile shall be installed using a vibratory hammer whenever possible.

**D. Conditions for Dredging Activities:**

- D1. Dredging shall be completed with a clamshell bucket or barge mounted excavator. Dredging may be conducted by a tracked excavator working at low tides in the dry. Use of any other type of dredge will require prior approval by Ecology.
- D2. Each pass of the dredge bucket shall be complete.
- D3. The dredge bucket shall be paused at the water surface, and the rate of ascent and descent shall be controlled in order to minimize impacts to water quality.

- D4. Dredged material shall be placed onto a barge or lined containment bin on the upland. The barges shall have sidewalls in order to contain the material within the barge. Barges shall not be overfilled in order to prevent barge overflow.
- D5. All dredged material will be transported to an approved upland disposal site.
- D6. Dredging operations shall be conducted in a manner that minimizes the disturbance or siltation of adjacent waters and prevents the accidental discharge of petroleum products, chemicals, or other toxic or deleterious substances into waters of the state.
- D7. The Applicant shall provide two (2) copies of the "Dredging and Disposal Workplan" to Ecology for review and approval. The workplan shall be submitted to Ecology per Condition A2 of this Order at least 21 days prior to the start of dredging. The Workplan shall identify methods, procedures, and equipment that will be used, and shall describe how water quality impacts will be minimized during dredging, material will be transferred to the upland, and return water will be handled. Notification information also shall be included in the Workplan.
- D8. Dredging shall be confined to the footprint illustrated in the Proposed Travelift Pier & Float Extension, Sheet 3 of 9, dated 8/3/12, revised 12/13/12.
- D9. The bottom profile shall be dredged to the contours illustrated in the Proposed Travelift Pier & Float Extension, Sheet 6 of 9, dated 8/3/12, revised 12/13/12.

**E. Operational Conditions:**

- E1. The Applicant shall obtain and comply with the Boatyard General Permit, including the following:
- The outfall shall be regulated with a valve and shall only discharge clean stormwater.
  - Process water from the wash rack shall be captured and processed in a contained system, with no process discharge to Fidalgo Bay.
  - The Applicant shall regularly inspect and clean the wash pad collection sump, untreated wash water gravity drain, force main pipe, and storm drain bypass pipe.
  - The Applicant shall pressure wash the concrete boat wash pad after each use and discharge all untreated wash water to the treatment system prior to opening the stormwater bypass drain.

**F. Emergency/Contingency Measures:**

- F1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- F2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- F3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
- F4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
  - a. Cease operations at the location of the violation or spill.
  - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
  - c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.
  - d. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

**G. Timing Requirements**

- G1. Work below the Ordinary High Water Line (OHWL) shall not occur from March 15 through June 14 of any year for the protection of fish.
- G2. This Order expires three (3) years from the date of issuance of the Corps permit.

**H. Reporting and Notification Requirement Conditions**

- H1. The Applicant shall provide to Ecology's 401/CZM Federal Permit Manager a copy of the final Corps permit within 2 weeks of receipt of the permit. A copy shall be submitted per condition A2 above.
- H2. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager:
- At least three (3) days prior to the start of construction.
  - Within seven (7) days of completing dredging.
  - Within 14 days after completion of construction at the project site.
- Notification, referencing Corps Reference #NWS-2012-1111, Order #9907 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.
- H3. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per Condition A2 a written construction status report and submit status reports every 12 months until construction is complete.

**YOUR RIGHT TO APPEAL**

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days of the date of receipt of this Order:

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

## ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW STE 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

## CONTACT INFORMATION

Please direct all questions about this Order to:

Rebekah Padgett  
Department of Ecology  
Northwest Regional Office  
3190 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008  
(425) 649-7129  
[rebekah.padgett@ecy.wa.gov](mailto:rebekah.padgett@ecy.wa.gov)

## MORE INFORMATION

### Pollution Control Hearings Board Website

[www.eho.wa.gov/Boards\\_PCHB.aspx](http://www.eho.wa.gov/Boards_PCHB.aspx)

### Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board

<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>

### Chapter 371-08 WAC – Practice And Procedure

<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>

### Chapter 90.48 RCW – Water Pollution Control

<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>

**Chapter 173-204 WAC – Sediment Management Standards**

[www.ecy.wa.gov/biblio/wac173204.html](http://www.ecy.wa.gov/biblio/wac173204.html)

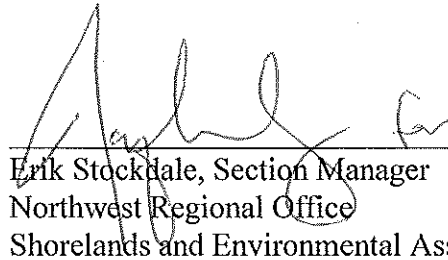
**Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**

[www.ecy.wa.gov/biblio/wac173200.html](http://www.ecy.wa.gov/biblio/wac173200.html)

**Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**

[www.ecy.wa.gov/biblio/wac173201A.html](http://www.ecy.wa.gov/biblio/wac173201A.html)

**SIGNATURE**



Erik Stockdale, Section Manager  
Northwest Regional Office  
Shorelands and Environmental Assistance Program

10/28/2013  
October 28, 2013

**ATTACHMENT A**

**MJB PROPERTIES, LLC  
MJB TRAVELIFT PROJECT  
Water Quality Certification Order #9907**

**Statement of Understanding of  
Water Quality Certification Conditions**

I have read and understand the conditions of Order #9907 Section 401 Water Quality Certification for the MJB Properties, LLC MJB Travelift Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company